

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**CASE NO. 3:14-cv-3879**

**CLOCKWORK IP, LLC**

**Plaintiff,**

**v.**

**PARR MANAGEMENT, LLC d/b/a  
FIRST CALL SERVICE PROS,**

**Defendant.**

**Jury Trial Demanded**

**COMPLAINT**

Plaintiff Clockwork IP, LLC (“Clockwork”), by counsel, alleges as follows for its Complaint against Defendant Parr Management, LLC d/b/a First Call Service Pros (“First Call”):

**INTRODUCTION**

1. Clockwork brings this action for federal and common law trademark and trade dress infringement to protect its valuable trademarks and trade dress associated with its affiliated One Hour Heating & Air Conditioning home services franchise. Clockwork’s distinctive One Hour related trademarks and trade dress serve to identify and distinguish One Hour Heating & Air Conditioning in the minds of consumers in the home services market. Those trademarks and trade dress are the result of years of work and effort by Clockwork’s corporate affiliates and franchisees to develop an industry-leading, nationwide reputation for the One Hour brand.

2. Instead of paying to franchise and license Clockwork’s valuable One Hour brand-related trademarks and trade dress, First Call has simply chosen to adopt trademarks and trade dress that are confusingly similar to Clockwork’s intellectual properties. First Call’s chosen

trademarks and trade dress copy Clockwork's One Hour brand-related trademarks and trade dress down to the color, sizing and style of the logos. Indeed, side-by-side comparisons of First Call's recently adopted trademarks and trade dress with Clockwork's show the great lengths that First Call went to mimic every element of the One Hour branding – all in order to trade on the consumer goodwill that Clockwork has developed in its One Hour intellectual property. Accordingly, Clockwork brings this action to stop the damage caused by First Call's willful efforts to trade on the One Hour brand and its associated reputation and goodwill.

### **PARTIES**

3. Clockwork is a Delaware limited liability company with a place of business at 50 Central Avenue, Suite 920, Sarasota, Florida 34236. Clockwork is a wholly-owned intellectual property holding subsidiary of Clockwork Home Services, Inc. ("Clockwork Home").

4. First Call is a Texas limited liability company with a place of business at 1890 Crown Drive, Suite 1300, Dallas, Texas 75234-9418, and a registered office at 417 Borders Court, Southlake, Texas 76092.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this lawsuit under 15 U.S.C. §§ 1121 and 1125 and under 28 U.S.C. §§ 1331 and 1338.

6. First Call is organized and existing under the laws of the State of Texas and has its principal place of business within this judicial district and division. For at least these reasons, First Call is subject to personal jurisdiction in this Court.

7. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) and (c) because First Call is subject to personal jurisdiction in this judicial district and a substantial part of the events giving rise to the claims occurred in this judicial district.

## **FACTS COMMON TO ALL COUNTS**

### **A. Clockwork's ONE HOUR HEATING & AIR CONDITIONING Marks**

8. Clockwork Home, Clockwork's parent company, is one of the largest providers of home services – such as plumbing, heating and air conditioning, and electrical services – in North America. Clockwork Home builds nationally-branded franchises for the home services contractor market. Through its franchise brands Benjamin Franklin the Punctual Plumber®, One Hour Heating & Air Conditioning® and Mr. Sparky®, Clockwork Home provides plumbing, heating and air conditioning and electrical services to more than three million homeowners in 46 states.

9. Clockwork Home has been exceedingly successful in its efforts to build national brands for home services across the country. Clockwork Home currently has more than 630 active franchise territories, including more than 100 for its One Hour Heating & Air Conditioning® (“One Hour Air”) HVAC franchise alone.

10. Clockwork Home has developed a large portfolio of trademarks that it deploys through its corporate and franchise operations to brand, market, and provide its home services. These trademarks are a crucial part of Clockwork Home's business and its mission, as they allow Clockwork Home to develop and maintain strong brand identities that distinguish its corporate and franchise service providers among service providers, potential franchisees and in the minds of members of the general consuming public.

11. In the case of One Hour Air, every aspect of One Hour Air's brand identity – the trademark, logo, tagline, and trade dress – are designed to capture the “mental real estate” of consumers across North America. For example, all of One Hour Air's franchisees employ a

distinctive color scheme and design for their fleets of trucks and vans. A picture of one such van is reproduced below:



Virtually every element of a One Hour Air truck or van is a part of One Hour Air's brand identity and is protected by substantial trademark and trade dress rights.

12. The combination of one or more of Clockwork's ONE HOUR family of marks, which are discussed below, together with the distinctive, yellow, black and red color scheme used by One Hour Air forms One Hour's protected trade dress that it uses in connection with virtually all of its services (the "One Hour Trade Dress"). The One Hour Trade Dress can be seen in virtually everything that One Hour Air and its franchisees do from the distinctive One Hour Air truck design above, to One Hour's online presence and to print advertisements.

13. Almost every element of the One Hour Trade Dress is registered with the United States Patent and Trademark Office. Clockwork owns trademark registrations for the marks: ONE HOUR (U.S. Reg. No. 3,033,873); ONE HOUR & Design (U.S. Reg. No. 2,916,944) (pictured below),



(the ONE HOUR Design Mark); ONE HOUR AIR CONDITIONING & HEATING (U.S. Reg. Nos. 3,933,458 and 3,933,469); ONE HOUR HEATING & AIR CONDITIONING (U.S. Reg. Nos. 4,030,339 and 4,030,350); ONE HOUR AIR CONDITIONING & HEATING & Design (U.S. Reg. No. 2,521,070) (pictured below)



and ONE HOUR HEATING & AIR CONDITIONING & Design (U.S. Reg. No. 3,530,593) (pictured below)



14. Other elements of the One Hour Air trucks & van trade dress are also protected by federal trademark registrations. For example, Clockwork also owns U.S. Reg. No. 2,807,312 for the mark ALWAYS ON TIME OR YOU DON'T PAY A DIME (the "ALWAYS ON TIME Mark"). Crucially, Clockwork also owns U.S. Reg. No. 3,518,890 for a mark consisting of the color yellow used over the entire truck in connection with "repair, maintenance, and installation services in the field of heating, ventilation, and air conditioning," in International Class 37 (the "Yellow Truck Mark").

15. Clockwork's registrations for the ONE HOUR mark, ONE HOUR & Design mark, ONE HOUR AIR CONDITIONING & HEATING & Design mark, ONE HOUR HEATING & AIR CONDITIONING mark, ALWAYS ON TIME Mark, and the Yellow Truck Mark, are each valid, subsisting and incontestable. As such, they are conclusive evidence of the

validity of the various One Hour-related marks they cover, of Clockwork's registration and ownership of those marks, and of Clockwork's exclusive right to use those marks. Clockwork's registrations for ONE HOUR AIR CONDITIONING & HEATING (U.S. Reg. Nos. 3,933,458 and 3,933,469) and ONE HOUR HEATING & AIR CONDITIONING (U.S. Reg. Nos. 4,030,339 and 4,030,350) are in full force and effect and are *prima facie* evidence of the validity of each mark, and of Clockwork's registration, ownership and exclusive right to use each mark.

**B. First Call's Infringement of Clockwork's One Hour Trade Dress and ONE HOUR Marks.**

16. First Call is a Dallas-based home services company that provides services that compete directly with services provided by One Hour Air's franchisees.

17. First Call is a member of Success Group International ("SGI"), an industry affinity group that, until very recently, was directly affiliated with Clockwork. First Call first joined SGI in October of 2009. As a member of SGI, First Call has had access to a wide variety of Clockwork's pieces of intellectual property and was even offered the opportunity to license certain of Clockwork's intellectual property for use in its business.

18. Though First Call has been in business for approximately 20 years, it's current branding as First Call and all of the related trade and service marks and trade dress it employs are of a much more recent vintage. For the vast majority of its existence, First Call conducted its home services business as Service Pros. Sometime after it joined SGI in 2009, however, First Call evidently decided to undertake a substantial rebranding for its business. At this point, First Call adopted the First Call name, stylized trademarks, and trade dress – all of which are derivative imitations of the One Hour Trade Dress and ONE HOUR family of trademarks.

19. Indeed, virtually everything about First Call's updated branding copies and calls to mind almost every aspect of the One Hour Trade Dress, One Hour Air's branding, and

Clockwork's related registered trademarks and trade dress. Most egregiously, as seen below, First Call's fleet of trucks and vans is now fully wrapped in yellow – exactly like One Hour Air's trucks and exactly like the registered Yellow Truck Mark.



Side-by-side comparisons of First Call's yellow truck trade dress and One Hour Air's yellow truck trade dress lay bare the obvious similarities and copying in which First Call has engaged.



From the use of the federally registered Yellow Truck Mark, to the black, white and red logo color scheme, First Call has copied virtually everything from the One Hour Trade Dress.

20. Even the details of the styling of the respective logos is identical – large black capitalized block letters for the main brand with smaller red capitalized text for the descriptive terms located just below the main part of the logo, and finally a time-themed slogan in smaller black font in first caps style. The comparison of the two stylized marks below underscores First Call’s obvious efforts to mimic One Hour Air’s stylized logo:



21. First Call’s copying of the One Hour Trade Dress goes beyond its trucks to its online presence and other advertising. Just as One Hour Air’s primary website prominently features its yellow, black and red color scheme, so too do First Call’s various websites.

22. Moreover, First Call’s choice of its primary brand name is evocative of One Hour Air’s primary brand name. Just as the ONE HOUR Mark evokes a sense of timeliness and speed, so too does First Call’s use of that name seek to convey those qualities. Similarly, First Call’s chosen tagline – “For Fast On-Time Service!” – conveys a similar commercial impression as the ALWAYS ON TIME Mark, namely speedy, on time service for electrical home services.

23. Not content to mimic One Hour Air’s trademarks and trade dress online and on its trucks, First Call has gone so far in misappropriating the look and feel of One Hour Air’s branding concept as to copy One Hour Air’s technician uniforms. As can be seen in the side-by-side comparison below:

One Hour Air Uniform



First Call Uniform



24. Upon information and belief, none of these remarkable similarities are coincidence. Rather, they are part of an intentional effort on First Call's part to make its branding as close as possible to One Hour Air's highly successful branding in an attempt to trade on the significant value that One Hour Air has developed in its trademarks and trade dress. There is no industry convention or commercial explanation for a home services company to adopt each element of the One Hour Air branding. One Hour Air's branding, trademarks, and trade dress were developed specifically to stand out and be distinctive in the home services market. First Call's subsequent adoption of exactly the same branding, trademarks, and trade dress can have no other purpose than to trade on the goodwill that One Hour Air has developed with consumers.

**COUNT I**  
**Federal Trademark Infringement**  
**15 U.S.C. § 1114**  
**(Infringement of the Registered Yellow Truck Mark)**

25. Paragraphs 1 through 24 are incorporated and made a part of this Count.

26. First Call is using reproductions, counterfeits, copies or colorable imitations of Clockwork's federally-registered Yellow Truck Mark in commerce in connection with the sale, offering for sale, distribution and/or advertising of services that do not originate with, and are not sponsored by or affiliated with Clockwork.

27. First Call is applying reproductions, counterfeits, copies or colorable imitations of Clockwork's federally-registered Yellow Truck Mark in advertising, intended to be used in commerce in connection with the sale, offering for sale, distribution, or advertising of services that do not originate with, and are not sponsored by or affiliated with Clockwork.

28. First Call's actions are likely to cause confusion, mistake, or deception as to the affiliation, connection or sponsorship of services offered by First Call in that franchises and potential franchisees, customers and potential customers are likely to believe that the services offered by First Call in connection with reproductions, counterfeits, copies or colorable imitations of Clockwork's Yellow Truck Mark are provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected to Clockwork.

29. First Call's actions are likely to cause confusion, mistake, or deception, in that franchisees and potential franchisees, customers and potential customers are likely to believe there is sponsorship, approval, licensing, affiliation, association, or some legitimate connection between the goods and services provided by First Call and Clockwork.

30. As a direct and proximate result of the likely confusion, mistake, or deception, Clockwork has suffered and will continue to suffer irreparable harm if First Call's conduct is not enjoined.

31. The likely confusion, mistake, or deception caused by First Call violates section 32 of the Lanham Act, 15 U.S.C. § 1114.

32. Upon information and belief, First Call's use of reproductions, counterfeits, copies or colorable imitations of Clockwork's federally registered Yellow Truck Mark is willful.

**COUNT II**  
**Federal Unfair Competition**  
**15 U.S.C. § 1114**  
**(Infringement of the One Hour Trade Dress)**

33. Paragraphs 1 through 24 are incorporated and made a part of this Count.

34. First Call is using trade dress that incorporates each element of the One Hour Trade Dress. This constitutes use of a term, name symbol and device and use of a false designation of origin, all of which is likely to cause confusion, mistake, or deception as to the source of origin of the products and/or services provided by First Call in connection with First Call's trade dress in that customers and potential customers are likely to believe that such products and/or services are provided by, sponsored by, approved by, licensed by, affiliated or associated with, or in some other way legitimately connected to Clockwork.

35. First Call's use of its trade dress is likely to cause confusion, mistake, or deception, in that customers and potential customers are likely to believe there is sponsorship, approval, licensing, affiliation, association, or some legitimate connection between the products and/or services provided by First Call in connection with its trade dress and those provided by One Hour Air and its associates and franchisees in connection with the One Hour Trade Dress.

36. As a direct and proximate result of the likely confusion, mistake, or deception, Clockwork has suffered and will continue to suffer irreparable harm if the conduct of First Call is not enjoined.

37. The likely confusion, mistake, or deception caused by First Call is in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

**COUNT III**  
**Common Law Trademark Infringement**  
**(Infringement of the Yellow Truck Mark)**

38. Paragraphs 1 through 24 are incorporated and made a part of this Count.

39. Clockwork's Yellow Truck Mark is a distinctive trademark that is eligible for protection under Texas common law.

40. Clockwork's affiliates and/or licensees have used the Yellow Truck Mark in commerce long before First Call began using that same mark in commerce.

41. First Call's use of the Yellow Truck Mark in connection with the offering of First Call's goods and services is likely to cause confusion with the Yellow Truck Mark.

42. As a direct and proximate result of First Call's use of the Yellow Truck Mark, Clockwork has suffered substantial damage and irreparable harm, for which Clockwork has no adequate remedy at law.

43. Unless and until First Call's infringement is enjoined, Clockwork will continue to suffer irreparable harm and damages.

**COUNT IV**  
**Common Law Trademark Infringement**  
**(Infringement of the One Hour Trade Dress)**

44. Paragraphs 1 through 24 are incorporated and made a part of this Count.

45. Clockwork's One Hour Trade Dress is distinctive trade dress that is eligible for protection under Texas common law.

46. Clockwork's affiliates and/or licensees have used the One Hour Trade Dress in commerce long before First Call began using those marks in commerce.

47. First Call's use of its trade dress in connection with the offering of First Call's goods and services is likely to cause confusion among consumers because of the confusing similarity of First Call's trade dress to the One Hour Trade Dress.

48. As a direct and proximate result of First Call's use of its trade dress, Clockwork has suffered substantial damage and irreparable harm, for which Clockwork has no adequate remedy at law.

49. Unless and until First Call's infringement is enjoined, Clockwork will continue to suffer irreparable harm and damages.

### **JURY DEMAND**

Clockwork respectfully requests a jury trial for this matter.

**WHEREFORE**, Clockwork prays for judgment against First Call as follows:

A. Preliminarily and permanently enjoining and restraining First Call, its directors, members, officers, agents, servants, employees, parents, subsidiaries, affiliates, and all persons in active concert or participation with, through, or under any of them, at first during the pendency of this action and thereafter perpetually:

1. from committing any acts of trademark infringement, trademark dilution, cybersquatting, unfair competition and from implying a false designation of origin or a false description or representation with respect to the Yellow Truck Mark, any member of Clockwork's One Hour family of marks or Clockwork's One Hour Trade Dress;
2. from using in any manner packaging, labels, signs, literature, display cards, Internet website, or other packaging, advertising, or promotional materials, or other materials related to First Call's goods or services, bearing the Yellow Truck

Mark, any member of Clockwork's One Hour family of marks, the One Hour Trade Dress, or any other mark, word, name or trade dress confusingly similar to any of those marks;

3. from making any statements on promotional materials or advertising for First Call's goods or services that are false or misleading as to source or origin or affiliation with, sponsorship by, or connection to Clockwork or One Hour Air; and

B. Requiring that First Call deliver up to Clockwork any and all containers, signs, packaging materials, printing plates, and advertising or promotional materials and any materials used in the preparation thereof, which in any way unlawfully use or make reference to the Yellow Truck Mark, any of Clockwork's One Hour family of marks, or the One Hour Trade Dress in connection with Clockwork's goods or services.

C. Requiring that First Call, within thirty (30) days after service of notice of entry of judgment or issuance of an injunction pursuant thereto, file with the Court and serve upon Clockwork's counsel a written report under oath setting forth details of the manner in which First Call has complied with the Court's order pursuant to paragraphs A and B above.

D. Requiring First Call to account and pay over to Clockwork all damages sustained by Clockwork, First Call's profits, Clockwork's attorneys' fees and costs, and ordering that the amount of damages awarded Clockwork be increased three times the amount thereof pursuant to 15 U.S.C. §§ 1117 and 1125.

E. Awarding First Call such other and further relief as this Court deems just and proper.

Respectfully submitted this 31st day of October 2014.

CLOCKWORK IP, LLC

By Counsel

*/s/ Aaron James Pickell*

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